CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 329

July 25, 1968

SALE OR EXCHANGE OF RESIDENCE: NONRESIDENT

Syllabus:

(1) A nonresident of California sells his out-of-state "principal residence" at a gain (whether or not said gain is recognized for tax purposes by the situs state), and thereafter within the time limits specified in Section 18091 of the Revenue and Taxation Code the seller becomes a resident of California and purchases a "principal residence" within California. Section 18095 may not be applied to reduce the basis of the new California "principal residence."

(2) A resident of California sells his California "principal residence" at a gain and thereafter, within the time limits specified in Section 18091 of the Revenue and Taxation Code, becomes a nonresident of California and purchases a "principal residence" outside of California. If all of the conditions to applicability of Section 18091 are satisfied, Section 18091 is applicable, notwithstanding the resulting nonrecognition of gain.

Under Section 17041 and 17596, California may not tax income accruing to a nonresidence from an out-of-state source. Application of Section 18095 to reduce the basis of the "principal residence" of the new California resident in (1) above is equated to the taxation of income accruing to a nonresident from an out-of-state source. Such an application is prohibited by existing law and by "Due Process" principles. Therefore, the analysis and conclusion to question (3) in Legal Ruling 107 is withdrawn.

Section 18091 provides for nonrecognition of gain realized on the sale of a "principal residence" to the extent that the taxpayer-seller reinvests that gain in a new "principal residence" within specified time limits. It is essentially identical to I.R.C. (1954) Section 1034(a).

Neither the federal nor state provision requires that the old and new residence be within the same state or county. Section 17596 provides that a change in taxpayer's status from resident to nonresident after gain has accrued to him in California does not affect the power of the state to tax that gain.

Notwithstanding the burdensome administrative problems such as determination of the out-of-state location of the taxpayer and whether or not the statutory conditions are met when the "principal residence" is sold and another is purchased out-of-state, California must apply Sections 18091 and 18095 to the factual situation in (2) above. This results in nonrecognition of gain and postpones taxation to a later date.